S.B.Civil Second Appeal No.88/2007
Nemi chand
vs
Dheda Ram & Deda Ram

Date of order : 23.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.NR Choudhary, for the appellant.
Mr. Murlidhar Boob, for the respondent.

<><><>

Heard learned counsel for the parties.

The appellant is aggrieved against the judgment and decree passed by the courts below by which the decree for eviction of the appellant has been passed by the trial court on the ground of personal bonafide necessity and committing default in payment of rent. It appears that inadvertently, the decree on the ground of default was also passed on assumption that defence of the defendant-appellant was struck off by the trial court because of non-payment of the rent during the pendency of the suit, but in fact, the said order was reversed by the appellate court in appeal against the order of striking off defence. So far as decree for eviction on the ground of personal bonafide necessity is concerned, learned counsel for the appellant vehemently submitted that plaintiff filed the suit for eviction of the appellant-defendant on the ground that pliantiff's son Om

Prakash is living in the house of his other son Shiv Karan and because of stitching work of embroidery etc. the plaintiff's son Shiv Karan is also in difficulty. The plaintiff as well as plaintiff's son Om Prakash both in their statements clearly admitted that after filing of the suit, Om Prakash constructed his own house and also in possession of one more land and, thereafter, started stitching and embroidery work in his own house. In view of the above admission of the plaintiff and plaintiff's son Om Prakash, the need of the plaintiff for the shop in question for business of his own son if was there, that has already come to an end and, therefore, both the courts below have committed serious illegality in passing the decree for eviction of the appellant on the ground of personal bonafide necessity of Om Prakash.

I considered the submissions of learned counsel for the parties and perused the record, statement of plaintiff and his son and other evidence also.

In the plaint, the plaintiff clearly stated two facts, one that plaintiff's son Om Prakash was doing business in the house of Shiv Karan, his another son and in para no.6 the plaintiff specifically pleaded that plaintif's son Om Prakash also has constructed

his house and is doing embroidery work in his house but where he is doing embroidery work is not situated in the main road and the house of the plaintiff's son Om prakash is situated in residential area, therefore, he is not getting enough customer.

In view of the above reason it cannot be said that plaintiff and his son Om Prakash have admitted that after filing of the suit, they constructed any accommodation suitable to their business. The plaintiff already disclosed construction of house of Om Prakash in the plaint itself. The other facts pleaded in the plaint also clearly show that plaintiff sought eviction of the defendant-tenant on the ground that Om Prakash is doing business in a place where he is not getting the customer.

Both the courts below concurrently decided the issue of personal bonafide necessity in favour of plaintiff and I do not find any substantial question of law involved in this appeal. Hence, appeal deserves to be dismissed. Mere reversion of the decree on the ground of default cannot make the decree of eviction of the tenant from the premises effected in any manner. The decree for eviction on the ground of personal bonafide necessity alone disentitles the appellant from continuation of

possession in the suit property as tenant. Therefore, the appeal of the appellant deserves to be dismissed.

At this stage, learned counsel for the appellant submitted that appellant is doing business in the suit property and he will face great hardship in case sufficient time is not granted looking to the status of the parties where the petty amount is also important.

Learned counsel for the respondent submitted that the decree was passed long back and time has passed therefore, shorter time may be granted.

In the totality of the facts of the case and nature of business of the plaintiff, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of one month from today that he shall hand over the vacant possession to the landlord by or before 31st Oct., 2007 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1st

Nov., 2008. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-